

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 8/9/2012

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

Agreement with Academy Huntsville, L.L.C.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a Development Agreement with Academy Huntsville, L.L.C. for the Engineering Design and Construction of Improvements to U. S. Highway 72, Project No. 65-12-SP39

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This Agreement to make improvements along Highway 72 to provide for a safe entrance into proposed retail development for a total contract amount of \$250,000.00. Account No. 23-6300-0811-8501

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

8/6/12

Date:

revised 3/12/2012

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **8/9/2012**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Development Agreement**

Document Name: **Academy Huntsville, L.L.C., Project No. 65-12-SP39**

City Obligation Amount: **\$250,000.00**

Total Project Budget: **\$250,000.00**

Uncommitted Account Balance: **0**

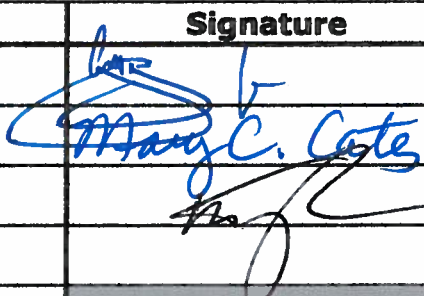
Account Number: **23-6300-0811-8501**

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating		8/6/12
2) Legal		8/7/12
3) Finance		8/8
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 12-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized, to enter into a development agreement with Academy Huntsville, L.L.C., in the amount of TWO HUNDRED FIFTY-THOUSAND AND NO/100 DOLLARS (\$250,000.00) for Development Agreement for Engineering Design and Construction of Improvements to U. S. Highway 72, Project No. 65-12-SP39, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Development Agreement between Academy Huntsville, L.L.C. for Engineering Design and Construction of Improvements to U. S. Highway 72, Project No. 65-12-SP36" consisting of a total of five (5) pages plus one (1) additional page consisting of Exhibit "A" and the date of August 9, 2012 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 9th day of August, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 9th day of August, 2012.

Mayor of the City of Huntsville,
Alabama

DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF HUNTSVILLE, ALABAMA
AND ACADEMY HUNTSVILLE, LLC
FOR THE ENGINEERING DESIGN AND
CONSTRUCTION OF IMPROVEMENTS
TO U.S. HIGHWAY 72

STATE OF ALABAMA)
)
COUNTY OF MADISON)

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into on this 9th day of August, 2012, by and between the CITY OF HUNTSVILLE, ALABAMA, a municipal corporation (the "City"), and ACADEMY HUNTSVILLE, LLC ("Academy") (a Georgia limited liability company).

WHEREAS, Academy is constructing a new retail facility at U.S. Highway 72 near the intersection of Nance Road in the city limits of Huntsville; and

WHEREAS, U.S. Highway 72 requires improvements to handle the increased traffic flow from the retail facility; and

WHEREAS, Academy has retained an engineering firm that has completed the engineering design for the said improvements to U.S. Highway 72; and

WHEREAS, the estimated construction costs for the improvements to U.S. Highway 72 are approximately Two Hundred Fifty Thousand Dollars (\$250,000.00); and

WHEREAS, the said improvements will serve the municipal interest of improved traffic flow and traffic safety within the City of Huntsville;

NOW THEREFORE for and in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, Academy and the City promise and agree as follows:

1. The City shall complete (1) the deceleration lane for westbound access from U.S. 72 to the Academy property, (2) the left turn lane into the Academy property for eastbound U.S. 72 traffic, and (3) associated drainage and paving within the ALDOT right-of-way as shown in the design attached hereto and incorporated herein by reference as Exhibit "A" subject to the approval of the design by the Alabama Department of Transportation. The improvements described in this section shall hereinafter be referred to as the "Work". The City shall procure all work necessary under this Agreement in

President of the City Council of the City
of Huntsville, AL
Date: August 9, 2012

accordance with Title 39 of the *Alabama Code*. The City Engineer shall have final approval of the Work. The City shall complete the work on or before March 1, 2013.

2. The obligations of Academy under this Agreement shall include the following and shall be conditions precedent to the City's obligations under this Agreement:

1. Upon the City selecting the successful bidder for the Work and prior to the Huntsville City Council approving the agreement between the City and the successful bidder, Academy shall pay the City any amount due under the said agreement greater than Two Hundred Fifty Thousand Dollars (\$250,000.00).
2. Have an "Academy Sports and Outdoors" retail facility open for business at the intersection of U.S. Highway 72 and Nance Road within the city limits of Huntsville no later than June 30, 2013. The said retail facility shall have a minimum of 71,000 square feet of retail space.

3. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alabama.

4. The City's obligations under this Agreement are subject to the approval of said funds by the City Council of the City of Huntsville.

5. This Agreement shall inure to the benefit of, and be binding upon Academy and the City and their respective successors and assigns and legal representatives.

6. This Agreement merges and supersedes all prior negotiations, representations, and agreements and constitutes the entire agreement between the parties hereto.

7. The parties expressly agree, intend and understand that neither this Agreement nor any provision or terms hereof, shall be amended, changed, or modified in any respect, nor may be an estoppel, novation or waiver regarding the same be effectuated, without the parties first executing a writing, in equal dignity to this Agreement, embodying their complete and full Agreement and understanding as to such amendment, change, modification, novation, or waiver.

8. Whenever any notice, request, demand or similar communication (a "Notice") is required or permitted to be given under this Agreement then the Notice shall be given in writing and shall be deemed to have been served and given if (i) delivered in person to the address set forth below for the party to whom the notice is given; (ii) placed in the United States mail, postage prepaid, certified mail, return receipt requested and addressed to such party at the address hereinafter specified (and notice in such fashion

shall be effective on the third business day after same has been mailed as described herein); (iii) sent by facsimile transmittal, with verbal confirmation made of the receipt thereof (such Notice to be effective on such confirmation) or (iv) sent by Federal Express or similar overnight courier service, prepaid and addressed to such party at the address hereinafter specified for the next business day delivery (and such Notice shall be deemed given when delivered to the appropriate address).

Address of Academy:

Academy Huntsville, LLC
Attention: Jeffrey Pape,
SR. VP Development
GBT Realty Corporation
9010 Overlook Blvd
Brentwood, TN 37027
(615) 370-0670 Office
(404) 386-5710 Cell

Address of City:

City of Huntsville
Attention: City Engineer
320 Fountain Circle
P.O. Box 308
Huntsville, Alabama 35804
Phone: 256-427-5300
Fax: 256-427-5121

9. The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, Code of Alabama (1975) § 31-13-1 through 31-13-30 (also known as and hereinafter referred to as “the Alabama Immigration Act”) as amended by Act No. 2012-491 on May 16, 2012 is applicable to all competitively bid contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, as amended, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are included in each subcontract in accordance with §31-13-9(c). Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2). Code of Alabama (1975) § 31-13-9 (k) requires that the following clause be included in all City of Huntsville contracts that have been competitively bid and is hereby made a part of this contract:

“By signing this contract the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.”

IN WITNESS whereof, Academy and the City have executed this Agreement effective as of the day and year first above written.

ACADEMY HUNTSVILLE, LLC

BY: _____

George B. Tomlin, Manager

ATTEST: _____

CITY OF HUNTSVILLE, ALABAMA

BY: _____

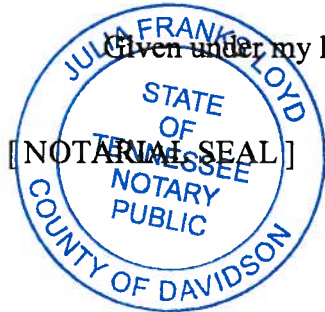
Mayor of the City of Huntsville, Alabama

ATTEST: _____

Charles E. Hagood
City Clerk Treasurer

STATE OF Tennessee)
COUNTY OF Davidson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that George B. Tomlin, whose name as Manager of Academy Huntsville, LLC, a Georgia limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, he, as such officers and with full authority, executed the same voluntarily for and as the act of said Academy Huntsville, LLC on the day the same bears day.



Given under my hand and official seal this the 7th day of August, 2012.

Julia Frank Lloyd
Notary Public
My Commission Expires: 5/5/15

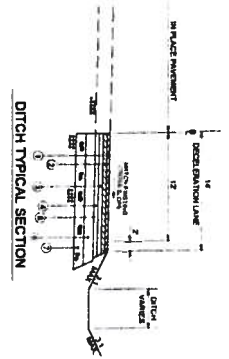
STATE OF ALABAMA)
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Tommy Battle** and **Charles E. Hagood**, whose names as Mayor and Clerk-Treasurer, respectively, of **The City of Huntsville**, a municipal corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this date, that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

Given under my hand and official seal this the _____ day of August, 2012.

[NOTARIAL SEAL]

Notary Public
My Commission Expires: _____



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POSTED SPEED LIMIT = 55 M.P.H.
RIGHT DISTANCE = 500' (EXCEEDS ASHTO
GUIDELINES FOR STOPPING SIGHT DISTANCE)

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GUIDELINES FOR STOPPING SIGHT DISTANCE)

- [illegible]

**ISSUED FOR
PLAN REVIEW
PURPOSES**

SITE DESIGN PLANS FOR

Academy

SPORTS+OUTDOORS

HIGHWAY 72 AND NANCE ROAD

MADISON COUNTY

HUNTSVILLE, AL

Design Services
For The Built
Environment

■

Atlanta
Birmingham
Chattanooga
Columbus
Dallas
Fort Lauderdale
Jackson
Jacksonville
Knoxville
Louisville
Memphis
Metairie
Nashville
Raleigh
Tampa

■

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